

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD ROGERS, individually and on
behalf of similarly situated individuals,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

Case No. 1:19-cv-03083

Honorable Matthew F. Kennelly

**DEFENDANT BNSF RAILWAY COMPANY’S MOTION TO APPROVE
BOND AND STAY ENFORCEMENT OF JUDGMENT**

Pursuant to Federal Rule of Civil Procedure Rule 62(b) and Local Rule 62.1, Defendant BNSF Railway Company (“BNSF”), through its undersigned counsel, respectfully submits the following motion requesting that the Court approve the supersedeas bond attached to this motion and stay enforcement of the judgment (ECF No. 225) pending post-trial briefing in this Court and the exhaustion of any appeals. In support of its motion, BNSF states as follows:

1. On October 12, 2022, the Court entered judgment in favor of Plaintiff and the certified class on their claims under the Illinois Biometrics Information Privacy Act, in the amount of \$228,000,000. ECF No. 225.

2. Pursuant to Federal Rules of Civil Procedure 50 and 59, on or before November 9, 2022, BNSF intends to file motions for renewed judgment as a matter of law or, in the alternative, for a new trial or to alter or amend the judgment. If those motions are unsuccessful, BNSF intends to appeal to the Seventh Circuit and, if necessary, potentially the Supreme Court.

3. Under Federal Rule of Civil Procedure 62(b), “[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security.” *See also Am. Mfrs. Mut. Ins. Co. v. Am. Broad.-Paramount Theaters, Inc.*, 87 S. Ct. 1, 3 (1966) (“a party taking an appeal from the District Court is entitled to a stay of a money judgment as a matter of right if he posts a bond in accordance with Fed.R.Civ.P. 62(d)”).

4. The amount of the bond is set by the Local Rules of this Court, which provide that “[a] supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus one year’s interest at the rate provided in 28 U.S.C. §1961, plus \$500 to cover costs.” N.D. Ill. L.R. 62.1. The bond must be secured by one of the methods described in the Local Rules, which include “the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury.” N.D. Ill. L.R. 65.1(b)(2).

5. Consistent with these requirements, BNSF has obtained a supersedeas bond in the amount of \$237,462,500, which satisfies the amount mandated by Local Rule 62.1 because it includes (1) the amount of the judgment, (2) one-year’s interest at the rate provided in 28 U.S.C. §1961, and (3) an additional \$500 to cover costs.

6. The bond is secured by Berkshire Hathaway Specialty Insurance Company, which is a Nebraska corporation that holds a certificate of authority from the Secretary of the Treasury certifying the company’s compliance with the laws and regulations of the U.S. Department of the Treasury for issuance of surety bonds.

7. A true and correct copy of the bond is attached to this filing as Exhibit A. Upon approval of this motion, BNSF will promptly send the original bond to the Clerk’s Office.

8. To the extent that the judgment is reduced on disposition of BNSF's post-trial motions, BNSF will submit an application for approval of a modified supersedeas bond to account for the amended final judgment.

For the reasons stated above, BNSF respectfully requests that the Court (1) approve BNSF's bond in the amount of \$237,462,500 as appropriate security for the judgment pending post-trial motions and the exhaustion of any appeals, and (2) upon approval and posting of the bond, enter an order staying enforcement of the judgment pending the resolution of BNSF's post-trial motions and the exhaustion of any appeals.

Dated: November 7, 2022

Respectfully submitted,

BNSF RAILWAY COMPANY

By: /s/ Elizabeth Herrington

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CERTIFICATE OF SERVICE

I, Elizabeth Herrington, certify that on November 7, 2022, I caused a copy of the foregoing to be served upon all counsel of record via the Court's CM/ECF system.

/s/ Elizabeth Herrington
Elizabeth Herrington